IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.1087 of 2004
With
Civil Application No.1180 of 2005
And
Civil Application No.276 of 2007

Smt. Balakabai Shankar Shinde
since deceased through her LRs
and ors. Appellants

Vs.

Sou. Gaurabai Annappa Suryavanshi
and ors. Respondents

Mr.M.R.Suryavanshi for appellants.
Mr.S.S.Redekar for resp.nos.1A to 1C.
for appellants.
for respondents.

CORAM: B.H.MARLAPALLE,J.

March 20, 2007.

P.C.

1. Heard Mr.Suryavanshi, the learned counsel for the appellants who were the original defendants in Regular Civil Suit No.36 of 1999. The said suit was filed by the present respondent - Smt. Gaurabai Annappa Suryavanshi. The plaintiff is the daughter of late Shankar Shinde who had left behind him his wife Balakabai, two sons viz. Dhondiram and Madhukar and three daughters viz. Sou. Gangubai Dhaklu Nilajkar, Smt.Ratnaprabha Vishnu Kamakar and the plaintiff. It appears some plot of land admeasuring

3 R. from Survey No.338/1 was sold by the defendants to defendant no.6 Shri Ananda Arjun Derekar and without the consent of the plaintiff. The plaintiff, therefore, filed Regular Civil Suit No.36 of 1999 praying for her share in the land located in Survey No.338/1 and admeasuring 41 R. It was more particularly the case of the plaintiff that by the partition deed at Exhibit 79 the said land was partitioned between Shankar and his two sons Dhondiram and Madhukar. The partition was effected on 6/11/1990 and Shankar died on 2/12/1991. While the plaintiff's mother was alive, the plaintiff claimed that she had 1/6th share in the suit property on the basis of even the partition deed dated 6/11/1990. The trial Court on consideration of the evidence and the written statement filed by the defendants allowed the suit partly and held that along with defendant nos.1 to 5, the plaintiff was entitled to have 1/6th share in the suit property i.e. land admeasuring 41 R. in Survey no.338/1.

2. The defendants being aggrieved by the said decree filed Regular Civil Appeal No.9 of 2003 and the learned Additional District Judge at Gadhinglaj was pleased to dismiss the same vide his judgment and

order dated 13/1/2004 and hence this second appeal.

3. Both the courts below considered the partition deed at Exhibit 79 and noted that the suit property being an ancestral property or a coparcener's property, the defendants were entitled for equal share which was demarcated for the late father and such share will be along with the brothers as well as the mother and in support of this finding reliance has been placed on a decision of this Court in the case of Govindram v. Chetumal **[AIR 1970 Bombay 251].** By the time the appeal came to be decided by the lower appellate court, the mother was no more and, therefore, each of the sharers i.e. two brothers and three sisters were held to have 1/5th share in the suit property which had gone to the father's share by way of the partition deed dated 6/11/1990. No fault could be found with the concurrent view taken by both the Courts below in deciding the share of the plaintiff-daughter.

4. It was submitted by Mr.Suryawanshi that the suit property was self-acquired property and this submission which has been advanced for the first time has to be rejected. Not only in the written

statement filed by the defendants but even in the lower appellate Court it was clearly admitted by them that the partition deed dated 6/11/1990 and marked as Exhibit 79 was in respect of the ancestral property inherited by Shankar and in fact the partition deed at Exhibit 79 also describes the property under partition as being ancestral property or inherited property by Shankar.

5. Under the circumstances, this Second Appeal does not involve any substantial question of law for consideration of this Court and the same must fail at the threshold. The appeal is dismissed in limine.

6. Civil Applications do not survive and the same stand dismissed. Ad-interim order passed earlier stands vacated.

(B.H